

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

IN THE MATTER OF:

Complainant,

DANIEL'S LITTLE SHOP OF HORRORS,

Charge No.: 2009CF0790

EEOC No.: 21BA83149

ALS No.: 09-567

Judge Lester G. Bovia, Jr.

This matter came to be heard on a public hearing on damages held on February 11, 2010, pursuant to a Default Order entered by the Commission on October 21, 2009. Complainant appeared *pro se* and testified on his own behalf. Though duly served, Respondent did not appear. Accordingly, this matter is now ready for disposition.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

The following facts were derived from the record file in this case and evidence presented at the public hearing:

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3. During Complainant's employment with Respondent, Respondent compensated Complainant by paycheck.
4. Complainant produced evidence of three paychecks, totaling \$1,016.39, which were returned to Complainant unpaid due to insufficient funds. In addition, Complainant produced evidence that he was responsible for \$50 in fees in connection with the returned checks.
5. Complainant also produced evidence of a \$125 "loading fine" deducted from one of his paychecks improperly.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act ("Act"), 775 ILCS 5/1-103(B) and 5/2-101(B).
2. Per the Commission's October 21, 2009 Default Order, Respondent is liable for violating the Act's prohibition of discrimination based on national origin.
3. Complainant has established actual damages related to the returned checks and the "loading fine" in the amount of \$1,191.39.
4. Complainant is entitled to prejudgment interest on his actual damages in accordance with the Act and the Commission's Procedural Rules.
5. The Commission should order Respondent to cease and desist from further acts of unlawful discrimination.

DISCUSSION

A. Liability

Per the Commission's October 21, 2009 Default Order, Respondent is liable for the acts of national origin discrimination alleged in Complainant's charge, namely, paying Complainant unequal wages, denying him an hourly wage increase, and discharging him.

B. Damages

After finding a respondent liable for violating the Act, the Commission may enter an order requiring that respondent to pay damages to the complainant as reasonably determined

by the Commission. Muhammad and Prof'l Staffing Servs., IHRC, ALS No. 08-346, March 17, 2009. The purpose of a damages award is to make the complainant whole. Id. Furthermore, it is axiomatic that ambiguities in the calculation of damages must be resolved in favor of the prevailing employee and against the discriminating employer, as it was the employer's wrongful actions that gave rise to the uncertainty in the first place. Salto and Audio-Tex Indus., Inc., IHRC, ALS No. 06-472, July 7, 2008. That axiom is particularly true where, as here, the employer has failed to participate in the case in any way. Id.

Complainant has requested, and presented evidence concerning, only two types of actual damages. First, Complainant testified that Respondent made an improper and discriminatory deduction from one of his paychecks. (Tr. 5-7.) Complainant provided a copy of a check stub reflecting the deduction, a "loading fine" in the amount of \$125. (Complainant's Ex. 2.) Second, Complainant testified that three paychecks that he attempted to cash were returned to him unpaid due to insufficient funds. (Tr. at 5-7.) Complainant provided the following documentary proof of the three returned paychecks: 1) a copy of a check in the amount of \$517.90 (Complainant's Ex. 1); 2) a copy of a check stub in the amount of \$277.74 (Complainant's Ex. 2); and 3) a copy of a check in the amount of \$220.75 (Complainant's Ex. 1). In addition, Complainant's documentary evidence reveals that he was responsible for \$50 in fees due to the returned checks. (Complainant's Ex. 1.)

Based on Complainant's testimony and documentary evidence, I find that Complainant has established actual damages in the amount of \$1,191.39, which represents the sum of all of the figures detailed above.

C. Prejudgment Interest

The Act allows an award of prejudgment interest on a complainant's actual damages. See 775 ILCS 5/8A-104(J). Accordingly, Complainant is entitled to prejudgment interest on his actual damages. Complainant's prejudgment interest award is to be calculated as provided in section 5300.1140 of the Commission's Procedural Rules. See 56 Ill. Adm. Code 5300.1140.

D. Reinstatement

Inasmuch as Complainant has not requested that his employment be reinstated, I make no recommendation regarding reinstatement.

E. Cease and Desist

In light of the Commission's finding of liability against Respondent, I recommend that the Commission order Respondent to cease and desist from further acts of unlawful discrimination.

RECOMMENDATION

Based on the foregoing, I recommend that the Commission: 1) award Complainant actual damages in the amount of \$1,191.39; 2) award Complainant prejudgment interest on his actual damages award in accordance with the Act and the Commission's Procedural Rules; and 3) order Respondent to cease and desist from further acts of unlawful discrimination.

HUMAN RIGHTS COMMISSION

BY:_____

**LESTER G. BOVIA, JR.
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: April 15, 2010